

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| DARRELL DIODATO, | : | CIVIL ACTION NO. 1:12-CV-2454 |
| | : | |
| Plaintiff | : | (Chief Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| WELLS FARGO INSURANCE SERVICES, USA, INC., | : | |
| | : | |
| Defendant | : | |

ORDER

AND NOW, this 8th day of September, 2014, upon consideration of the motion (Doc. 63) for summary judgment by defendant and counterclaimant Wells Fargo Insurance Services, USA, Inc. (“Wells Fargo”) and the motion (Doc. 66) for partial summary judgment by plaintiff and counterdefendant Darrell Diodato (“Diodato”), each pursuant to federal Rule of Civil Procedure 56(a), and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

1. Wells Fargo’s motion (Doc. 63) is GRANTED in part and DENIED in part as follows:
 - a. The motion is GRANTED with respect to Diodato’s claims for fraudulent inducement (Count I), breach of contract - good faith and fair dealing (Count II), breach of contract (Count III), violation of Pennsylvania’s Wage Payment and Collection Law (Count IV), and unjust enrichment (Count VIII).
 - b. The motion is further GRANTED with respect to Diodato’s claims for defamation and commercial disparagement (Counts V and VI) to the extent those claims pertain to James Voltz’s statement that Diodato’s actions “were not in the best interests of Wells Fargo” and to Wells Fargo’s cease and desist letters sent to Christian Baker Company and American Insurance

Administrators, Inc. The motion is otherwise DENIED as to Counts V and VI.

- c. The motion is further GRANTED with respect to Diodato's claims for declaratory judgment (Count IX) to the limited extent it pertains to the non-solicitation provision of the Wells Fargo Agreement Regarding Trade Secrets, Confidential Information, Non-Solicitation, and Assignment of Inventions (the "TSA"). The motion is otherwise DENIED as to Count IX.
- d. The motion is DENIED with respect to Diodato's claims for unauthorized use of name or likeness in violation of 42 PA. CONS. STAT. § 8316 (Count VII), unfair competition (Count X), and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a) (Count XI).

2. Diodato's motion (Doc. 66) is GRANTED in part and DENIED in part as follows:
 - a. The motion is GRANTED to the extent the court concludes that Wells Fargo cannot seek injunctive relief or monetary damages for its breach of contract counterclaim (Count I). The motion with respect to Count I is otherwise DENIED.
 - b. The motion is GRANTED with respect to Wells Fargo's counterclaims for violation of the Pennsylvania Uniform Trade Secrets Act, 12 PA. CONS. STAT. §§ 5301 *et seq.* (Count II), unfair competition (Count III), conversion (Count IV), and tortious interference with prospective business relations (Count V).
3. The non-acceptance provision of the TSA prohibiting Diodato's passive acceptance of former clientele's business when unilaterally approached by those clients is DECLARED VOID as overbroad and not reasonably necessary for the protection of Wells Fargo's legitimate interests.
4. Entry of judgment pursuant to paragraphs 1, 2, and 3 is DEFERRED pending final resolution of this litigation.

5. This matter shall proceed to trial on the following claims:
 - a. Diodato's claims for defamation and commercial disparagement to the extent those claims pertain to James Voltz's statements that Diodato is "insubordinate" and his business practices are "suspect" (Counts V and VI); unauthorized use of name or likeness in violation of 42 PA. CONS. STAT. § 8316 (Count VII); unfair competition (Count X); and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a) (Count XI).
 - b. Wells Fargo's counterclaim for breach of contract (Count I) to the extent Wells Fargo may seek equitable relief or nominal damages for Diodato's violation of the non-solicitation provisions of the TSA.
6. A revised scheduling order setting this matter for trial shall issue by future order of the court.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania